

DOCKET NO. 94-11

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of

TELEPHONE AND DATA SYSTEMS,
INC.

For facilities in the Domestic Public
Cellular Telecommunications Radio Service
on Frequency Block B, in Market 715,
Wisconsin 8 (Vernon), Rural Service Area

) CC Docket No. 94-11,
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) File No. 10209-CL-P-715-B-88
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To: Honorable Joseph P. Gonzalez
Administrative Law Judge

**COMMON CARRIER BUREAU'S COMMENTS ON MOTION FOR
MODIFICATION OF ISSUES AND CAPTION**

On March 17, 1994, Telephone and Data Systems, Inc. (TDS) and United States Cellular Corporation (USCC) (referred to collectively as TDS) filed a Motion for Modification of Issues and Caption. The Acting Chief, Common Carrier Bureau (Bureau) opposes the modification of the caption and supports modification of the issues to the extent specified below.

1. In its motion, TDS argues that the caption and the issues in this proceeding should be modified to reflect a change in the ownership of the authorization. TDS was an applicant for the cellular authorization in the Wisconsin 8 Rural Service Area and was selected in the lottery.¹ TDS's application was initially found acceptable and TDS was issued an authorization. See Telephone and Data Systems, Inc., 4 FCC Rcd 8021 (Mobile Serv. Div. 1989). TDS, thereafter, assigned the authorization for the Wisconsin 8 market to its wholly-owned subsidiary Wisconsin

¹ See Public Notice, Report No. CL-89-174 (released June 9, 1989).

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RSA #8, Inc. (WRSA). The Commission granted this assignment on February 21, 1991.² Then, TDS transferred control of WRSA to USCC. The Commission granted this transfer on May 18, 1994.³ Because USCC is a subsidiary of TDS, WRSA remains an indirect subsidiary of TDS.

2. The Bureau notes that the Motion to Modify filed by TDS is procedurally defective. Section 1.229(a) of the Commission's Rules requires that "[a] motion to . . . change . . . the issues . . . must be filed within 15 days after the full text or a summary of the order designating the case for hearing has been published in the Federal Register." 47 C.F.R. § 1.229(a). A summary of the hearing designation order was published in the Federal Register on February 16, 1994.⁴ TDS's motion was filed more than 15 days later March 17, 1994. TDS's motion is, therefore, untimely. TDS has made no showing, pursuant to Section 1.229(b)(3) of the rules, to set forth the reason why it was not possible to file the motion within the prescribed period. Accordingly, TDS's motion should be summarily dismissed.

3. Moreover, despite the fact that TDS assigned its interest in the Wisconsin 8 market to a subsidiary and later transferred control of that subsidiary to another subsidiary, the Bureau does not support a change in the caption of this proceeding. The Commission in Telephone and Data Systems, Inc., FCC 94-29 (1994) (HDO), the Order designating the current issues for hearing, made it clear that this proceeding involves more than the authorization for the Wisconsin 8 market. In the opening paragraph of the HDO, the Commission states: "we additionally designate for hearing character issues concerning a TDS subsidiary's conduct before the

² See Public Notice, Report No. CL-91-92 (released Feb. 22, 1991).

³ See Public Notice, Report No. 92-93 (released May 19, 1992).

⁴ 59 Fed. Reg. 7673 (Feb. 16, 1994).

Commission and whether this calls in question TDS's qualifications as a Commission licensee."⁵ Additionally, in the HDO, the Commission also stated that "[i]f USCC misrepresented facts or lacked candor, this calls into question USCC's, and its parent TDS's qualifications to be Commission licensees."⁶ These statements by the Commission make it clear that this proceeding involves more than a narrow determination whether a TDS subsidiary has the requisite qualifications to hold the authorization in the Wisconsin 8 market. Instead, the statements illustrate that the Commission seeks a broader determination on TDS's basic character qualifications to be a licensee.

4. The accuracy of this is emphasized by the fact that the examination is into the conduct of a TDS subsidiary in a market other than the Wisconsin 8 market.⁷ The Commission could have designated the La Star character issues in any of the proceedings which were before the Commission which raised the character issues. It chose to designate the issues in the Wisconsin 8 proceeding.⁸ Nothing in the language of the HDO illustrates that the Commission sought to limit the inquiry to the Wisconsin 8 market. To the contrary, as shown above, the language of the HDO demonstrates that the Commission believes that the inquiry reaches beyond the

⁵ HDO at ¶ 1 (emphasis added).

⁶ Id. at ¶ 33 (emphasis added).

⁷ The HDO designates issues as to whether USCC misrepresented facts, lacked candor, or attempted to mislead the Commission during the La Star Cellular Telephone Company proceeding for a cellular authorization within the New Orleans, Louisiana, Metropolitan Statistical Area.

⁸ Whereas the Commission designated the La Star character issues in the Wisconsin 8 proceeding and the same issues have been raised in other proceedings, the Commission invited those parties which have raised the issues to intervene into this proceeding. See HDO at ¶ 38. The allowance for these parties who have no interest in Wisconsin 8 to intervene also demonstrates that this proceeding involves more than the Wisconsin 8 authorization alone.

Wisconsin 8 market. The HDO lays the foundation for an inquiry into TDS's requisite character qualifications to be a Commission licensee.

5. Moreover, the Commission acknowledges in the HDO that the Bureau has been conditioning grants to TDS and its subsidiaries of all licenses for new facilities, modification of facilities, transfers of control and assignments of licenses upon the final resolution of the unresolved character issues. The Commission additionally directed the Bureau to continue to condition such grants on the outcome of this proceeding.⁹ The Commission's recognition of the conditions, and edict for the Bureau to continue to condition grants, further demonstrates that the effect of this proceeding goes beyond the Wisconsin 8 authorization. The Bureau, therefore, opposes a change in the caption of this proceeding.

6. The Bureau, however, is willing to support a modification of the captioned issues. Although the Bureau does support TDS's proposal for modification. The modification suggested by TDS ignores that the scope of this proceeding is to consider TDS's basic qualifications to be a Commission licensee. Therefore, the Bureau suggests the following modification to issue 2:

(2) To determine, based on the evidence adduced in issue 1, above, whether Telephone and Data Systems, Inc., or any of its subsidiaries, possess the requisite character qualifications to hold the cellular Block B authorization for the Wisconsin 8 (Vernon) Rural Service Area and, accordingly, whether the grant of its application would serve the public interest, convenience, and necessity.

(The under-scored portion being the modification proposed by the Bureau.) The Bureau believes that this revision is more consistent with the Commission's objectives in the proceeding. This

⁹ See HDO at n.61.

proposal recognizes that the scope of the proceeding involves TDS's basic character qualifications and allows the trier of fact to also consider the affect on the TDS subsidiary WRSA in the Wisconsin 8 market.

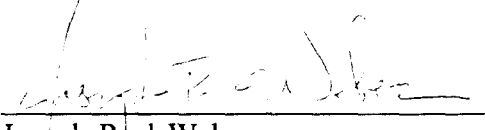
For the foregoing reason, the Acting Chief, Common Carrier Bureau, opposes TDS's motion for modification of the caption of the proceeding and supports a more limited modification of issues than proposed by TDS.

Respectfully submitted

A. Richard Metzger, Jr.
Acting Chief, Common Carrier Bureau

March 28, 1994

By:


Joseph Paul Weber
Trial Attorney

CERTIFICATE OF SERVICE

I, Elizabeth Williams, do hereby certify that on March 28, 1994, copies of the foregoing Comments on Motion for Modification of Issues and Caption were served by first-class mail, U.S. Government frank, except as otherwise noted, on the following parties:

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